

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

<p>EUGENE EDWARD TRACY,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>DAWN ELSHERE, Circuit Court Judge, in her individual and official capacity, DAVE ERICKSON, Chief of Police, City of Brookings Police Department, in his individual and official capacity, SETH BONNEMA, Officer at Brookings County Jail, in his individual and official capacity, HEDI SCHULTZ, Sanford Health RN, in her individual and official capacity, SEAN DOREMUS, Police Officer for Brookings County Police Department, BROOKINGS POLICE DEPARTMENT, and SANFORD HEALTH HOSPITAL,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">4:21-CV-04049-KES</p> <p style="text-align: center;">ORDER GRANTING PLAINTIFF'S MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND REQUIRING AN INITIAL PARTIAL FILING FEE</p>
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On April 1, 2021, plaintiff, Eugene Edward Tracy, filed a prisoner pro se civil rights lawsuit. Docket 1. Tracy moves for leave to proceed in forma pauperis and filed a prisoner trust account report. Dockets 4, 5. Under the Prison Litigation Reform Act, a prisoner who “brings a civil action or files an appeal in forma pauperis . . . shall be required to pay the full amount of a filing fee.” 28 U.S.C. § 1915(b)(1). “When an inmate seeks pauper status, the only issue is whether the inmate pays the entire fee at the initiation of the

proceedings or over a period of time under an installment plan.” *Henderson v. Norris*, 129 F.3d 481, 483 (8th Cir. 1997) (quoting *McGore v. Wigglesworth*, 114 F.3d 601, 604 (6th Cir. 1997)).

The initial partial filing fee that accompanies an installment plan is calculated according to 28 U.S.C. § 1915(b)(1), which requires a payment of 20 percent of the greater of:

- (A) the average monthly deposits to the prisoner’s account; or
- (B) the average monthly balance in the prisoner’s account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

Tracy reported an average monthly balance for the past six months to his prisoner trust account of \$14.05, and an average monthly deposit of \$145.92. Docket 5 at 1. Based on this information, the court grants Tracy leave to proceed in forma pauperis, but he must pay an initial partial filing fee of \$29.18 (20 percent of his average monthly deposit). Tracy must pay the initial partial filing fee of **\$29.18 by May 27, 2021**. Failure to pay the filing fee by May 27, 2021, will result in dismissal without prejudice of Tracy’s complaint.

Thus, it is ORDERED:

1. That Tracy’s motion for leave to proceed in forma pauperis (Docket 4) is granted. Tracy must make a payment of **\$29.18 by May 27, 2021**, made payable to the Clerk, U.S. District Court. If Tracy does not pay the initial partial filing fee by May 27, 2021, his complaint will be dismissed without prejudice. The court will

conduct a 28 U.S.C. § 1915A screening after he pays his initial partial filing fee.

2. That the institution having custody of Tracy is directed that whenever the amount in Tracy's trust account, exclusive of funds available to him in his frozen account, exceeds \$10.00, monthly payments that equal 20 percent of the funds credited the preceding month to Tracy's trust account shall be forwarded to the U.S. District Court Clerk's Office under to 28 U.S.C. § 1915(b)(1), until the \$350 filing fee is paid in full.

Dated April 27, 2021.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE